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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,126	11/26/2003	Hiroyuki Takahashi	50049-042	4838
20277 7590 03/25/2008 MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096			EXAMINER HANDY, DWAYNE K	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 03/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/722,126

Applicant(s)

TAKAHASHI ET AL.

Examiner

DWAYNE K. HANDY

Art Unit

1797

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/5/04, 5/20/04 & 2/27/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the vessel" in line 2, the limitation "the outer periphery" in line 4, the limitation "the top" in line 5, and the limitation "the other end" in line 5. There is insufficient antecedent basis for these limitations in the claim. Claim 2 also recites the term "self-supported". This term is unclear as it is unclear to the Examiner as to what structural features are claimed by the term "self-supported". Claim 2 also contains the phrase "shaped like a long and narrow trapezoid". The term "like" renders the claim indefinite because it is unclear what specific shapes meet the limitation of being shaped "like a long and narrow trapezoid".

Claim 3 recites the limitation "the end". There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation of the retaining part being "shaped like an inverse cup". The term "like" renders the claim indefinite because it is unclear what specific shapes meet the limitation of being shaped "like an inverse cup". Claim 4 recites the

limitation "the center of the top". There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the end". There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the connecting shaft of the connecting part" in lines 3-4. There is insufficient antecedent basis for both of these terms in the claim. Claim 6 recites the limitation "the end". There is insufficient antecedent basis for this limitation in the claim. Claim 6 recites the limitations "the side" and "the base". There is insufficient antecedent basis for these limitations in the claim. Claim 6 also contains the limitation of the end of an arm having a "slight chevron shape". This is unclear. The term "slight" is a relative term which renders the claim indefinite. How far may the shape deviate from a full chevron shape while still meeting the limitation of a "slight chevron shape"?

Claim 7 recites the limitation "the surface of a chevron shaped top". There is insufficient antecedent basis for this limitation in the claim.

Claim 8 contains the phrase "shaped like a hollow cylinder". The term "like" renders the claim indefinite because it is unclear what specific shapes meet the limitation of being shaped "like a hollow cylinder".

Claim 9 recites the limitation "the connecting part" in line 3, "the shaft supports" in lines 4-5, and "the cap body" in line 6. There is insufficient antecedent basis for these limitations in the claim.

Claim 10 recites the limitation "the inner bottom" in lines 2-3, the limitation "the end of an arm support member" in lines 3-4, and "the back" in line 6. There is insufficient antecedent basis for these limitations in the claim.

Claim 11 recites the limitation "the symmetric shaft bearings" in lines 2-3, the limitation "the side walls" in line 3, and "the arm" in line 4. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Perrella (4,095,712). Perrella teaches a hinged closing element. The closing element is best shown in Figures 1-3 and described in column 2. The closing element is comprised of a sealing member (flap – element #15), a pressurizing member (surface - #19), and retaining part (17). Instructions for using the closure are given in column 2, lines 54-62. The instructions disclose that applying pressure on surface 19, causes the flap 15 to open; releasing the pressure results in closing the flap.

5. Claims 1, 3, 8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowsky (4,095,712). Ostrowsky teaches a press-to-open closing element. The element is best shown in Figure 5-7 – esp. Figure 6. The closing element includes a sealing member (closure -#40), a pressurizing member (arm - #32) and a retaining part (arm - #34). Ostrowsky provides on how to use the closure in column 5, lines 33-50. When pressure is applied on arm 32, closure member 40 opens; when the pressure is released, the closure element returns to the closed position.

Inventorship

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky (5,735,438). Ostrowsky teaches every element of claim 13 except for the collection of material. It would have been obvious to one of ordinary skill in the art, however, to also collect materials using the container and closure of Ostrowsky. One would use the container and closure of Ostrowsky in order to take advantage of the one-handed operation of the closing element while collecting materials to be stored in the container.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ostrowsky (4,776,501), Baker et al. (6,763,945), Hins (6,336,574), Knickerbocker et al. (6,283,333), Robbins, III et al. (5,894,965) Campbell (5,273,177) and Taber et al. (4,607,768) teach closure systems operating by pressing.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE K. HANDY whose telephone number is (571)272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DKH
March 3, 2008

/Jill A. Warden/
Supervisory Patent Examiner, Art Unit 1797

10/722,126

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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10/722,126

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Respectfully submitted,

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